

PRESTON FRAZIER.

FEBRUARY 29, 1840.

Laid on the table.

Mr. GIDDINGS, from the Committee of Claims, made the following

REPORT:

*The Committee of Claims, to whom was referred the petition of Preston Frazier, report :*

That the petitioner claims compensation for a horse which he states to have been lost while in the service of the United States, in the Florida war, in the month of September, A. D. 1836.

From the statement of the petitioner, it appears that he was a surgeon in the Tennessee militia, engaged in the Florida war, in 1836 ; and, while passing from one post to another, in the month of September, his horse was accidentally injured, without any neglect on his part ; that said horse was left by petitioner at a place called New-run, where he remained for some time until he was sold at auction for the price of seventy-one dollars ; that the petitioner paid to the auctioneer about fifty dollars for the keeping of said horse after the injury, and prior to the sale ; that said horse was worth one hundred and fifty dollars : which amount he now claims from Government, deducting the sum of twenty dollars, which he has received, besides defraying the expense of the horse after the injury.

The committee deem it unnecessary to speak of the deficiency of proof to establish the facts contended for by the claimant, inasmuch as, if all the facts were fully established, they would not, in the opinion of the committee, entitle the petitioner to any compensation from Government. The contract upon which the claimant entered into the service of the Government stipulated that he should provide his own horse. This was his duty ; for it was his express engagement, freely and voluntarily entered into by him. In pursuance of this duty, he furnished a horse, for which he has received the compensation stipulated ; he has performed his undertaking according to the letter and spirit of it, and the Government has compensated him therefor in the manner and at the price stipulated. Both parties have fairly fulfilled and performed their contract, and it is not easy to discover the principle on which either is entitled to further compensation. The United States did not become insurers of the horse by employing him at a stipulated price. The horse continued to be the property of the petitioner, and was used at his risk, in the same manner he would have been had the horse been employed by an individual. To grant pay in cases like the present, would be to make the Government the insurers of all property used in their employ. It would establish a precedent which has

